

# COMMENT

## BEYOND THE SHACKLES AND CHAINS OF THE MIDDLE PASSAGE: HUMAN TRAFFICKING UNVEILED

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*"[T]he women drank whiskey to dull their shame and pain. . . . The condom wrappers took the place of time cards."*<sup>1</sup>

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1. ANTHONY M. DEStEFANO, *THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* 3–4 (2007) (illustrating the desperate conditions endured by sex trafficking victims). “‘At the end of the night I turned in the condom wrappers,’ one of the young women said to investigators. ‘Each wrapper represented a supposed deduction to my smuggling fee. We tried to keep our own records but the bosses destroyed them. We were never sure what we owed.’” *Id.* at 4 (quoting Sean Gardiner & Geoffrey Mohan, *The Sex Slaves from Mexico: Teenagers Tell of Forced Prostitution*, *NEWSDAY*, Mar. 12, 2001, at A15).

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## I. INTRODUCTION

Trafficking of humans has been referred to as “the trade of human misery,”<sup>2</sup> which today constitutes the largest manifestation of slavery.<sup>3</sup> Annually, at least 700,000 individuals, primarily children and women, are trafficked across and within international borders.<sup>4</sup> Estimates reveal that “[a]pproximately 50,000 children and women are trafficked into the United States each year.”<sup>5</sup> Among these, approximately thirty thousand trafficking victims come from Southeast Asia, about ten thousand from Latin America, four thousand from Eastern Europe, and about one thousand from other areas.<sup>6</sup> The human trade is primarily driven by demands for women in the sex industry, domestic servitude, agricultural work, and

2. Arun Kumar Acharya, *International Migration and Trafficking of Mexican Women to the United States*, in *TRAFFICKING AND THE GLOBAL SEX INDUSTRY* 21, 25 (Karen Beeks & Delila Amir eds., 2006); see also CATHERINE PARIS, *MODERN DAY SLAVERY: HUMAN TRAFFICKING REVEALED* 15 (2007) (“Victims are nothing more than a commodity to these slave traders; they are often referred to as ‘merchandise.’”).

3. Trafficking Victims Protection Act of 2000 § 102(b)(1), 22 U.S.C. § 7101(b)(1) (2006) (stating that, in the twenty-first century, “the degrading institution of slavery continues throughout the world”).

4. *Id.*; see also U.S. DEP’T. OF STATE, *TRAFFICKING IN PERSONS REPORT* 7 (2008), <http://www.state.gov/documents/organization/105501.pdf> (stating that “[a]pproximately [eighty] percent of transnational victims are women and girls and up to [fifty] percent are minors”). “The majority of transnational victims are females trafficked into commercial sexual exploitation.” U.S. DEP’T. OF STATE, *TRAFFICKING IN PERSONS REPORT* 7 (2008), <http://www.state.gov/documents/organization/105501.pdf>.

5. Trafficking Victims Protection Act of 2000 § 102(b)(1), 22 U.S.C. § 7101(b)(1) (2006).

6. AMY O’NEILL RICHARD, *CENTER FOR THE STUDY OF INTELLIGENCE, INTERNATIONAL TRAFFICKING IN WOMEN TO THE UNITED STATES: A CONTEMPORARY MANIFESTATION OF SLAVERY AND ORGANIZED CRIME* 3 (2000), <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/trafficking.pdf> (iden-

sweatshop labor.<sup>7</sup> The business of sex trafficking is considered the fastest growing supplier of profits for organized crime throughout the world.<sup>8</sup> This multi-billion dollar enterprise has been ranked “the number two illicit industry in the world.”<sup>9</sup> Because of the extreme number of individuals affected by human trafficking, the trade has become an international threat.<sup>10</sup>

At home, Congress attempted to combat human trafficking in the United States by passing the Trafficking Victims Protection Act (TVPA) in October 2000.<sup>11</sup> The three stated goals of the TVPA are the prevention of human trafficking overseas, the protection and assistance of victims in the United States, and more stringent prosecution and punishment of traffickers.<sup>12</sup> Since the implementation of the TVPA in 2000, the Department of Justice has prosecuted more than 170 trafficking

tifying Thailand, Vietnam, China, Mexico, Russia, Ukraine, and the Czech Republic as the primary suppliers of trafficking victims to the United States).

7. *Id.* (“Women have also been trafficked to provide maid services at motels and hotels, peddle trinkets on subways and buses, and beg.”).

8. Trafficking Victims Protection Act of 2000 § 102(b)(1), 22 U.S.C. § 7101(b)(1) (2006) (asserting that trafficking in humans is now conducted by developed criminal enterprises); *see also* CATHERINE PARIS, *MODERN DAY SLAVERY: HUMAN TRAFFICKING REVEALED* 15 (2007) (discussing the role that organized crime plays in human trafficking); SELECT COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES (MONEYVAL), *EUROPEAN COMMITTEE ON CRIME PROBLEMS, COUNCIL OF EUROPE, PROCEEDS FROM TRAFFICKING IN HUMAN BEINGS AND ILLEGAL MIGRATION/SMUGGLING* 3 (2005) (stating that illegal migration, human smuggling, and human trafficking represent “a core business of international criminal [organization]”).

9. CATHERINE PARIS, *MODERN DAY SLAVERY: HUMAN TRAFFICKING REVEALED* 16 (2007); *see also* U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* 34 (2008), <http://www.state.gov/documents/organization/105501.pdf> (estimating the value of the industry at thirty-two billion dollars, when taking into account “both the sale of the individual and the value of their exploited labor or services”).

10. Susan W. Tiefenbrun, *Sex Sells but Drugs Don’t Talk: Trafficking of Women Sex Workers and an Economic Solution*, 24 T. JEFFERSON L. REV. 161, 173 (2002) (discussing the globalization of sex trafficking networks, developed by international organized crime groups in pursuit of large profits). “The involvement of the organized crime networks in the sex trafficking industry is extensive because the sex work industry is lucrative. Profits from sex trafficking are second only to drugs and arms.” *Id.* (footnote omitted).

11. Pub. L. No. 106-386, 114 Stat. 1464 (codified as amended in scattered sections of 18 and 22 U.S.C.); *see also* CATHERINE PARIS, *MODERN DAY SLAVERY: HUMAN TRAFFICKING REVEALED* 75 (2007) (noting that the TVPA is the first all-inclusive piece of federal legislation of its kind addressing the issue of human trafficking). Penalties under the TVPA are more serious than their predecessors—maximum prison sentences increased from ten to twenty years and life imprisonment may be warranted in certain situations. Diana Polulyakh & Sue Young Ra, *Invisible Chains: Human Trafficking and Forced Labor in the United States*, 8 J.L. & SOC. CHALLENGES 165, 170 (2006). The TVPA also allows victims to sue traffickers for damages. *Id.* at 171.

12. Kevin Bales et al., *Hidden Slaves: Forced Labor in the United States*, 23 BERKELEY J. INT’L L. 47, 69–70 (2005).

cases.<sup>13</sup> While the number of cases prosecuted can be viewed as a positive result of the TVPA's passage, the TVPA has failed to accomplish an important goal—protection of the victims of human trafficking.

This Comment seeks to provide a critical analysis of the TVPA by exploring the act's failures and successes. Part II will look at the factors contributing to the rise of human trafficking. Part III will provide a critical analysis of the TVPA, its purposes, and its shortcomings. Finally, Part IV will propose possible amendments to the statute that may aid law enforcement in protecting victims, as well as prosecuting traffickers. The first step of reform must be to identify those areas in the United States where trafficking activities are concentrated and move adequate resources, such as law enforcement training and mental health services for victims, to these areas. Second, funding for combating human trafficking should be reallocated from efforts abroad to law enforcement at home, as American officials are better equipped to effectively utilize those resources for the benefit of trafficking victims. And, finally, the TVPA must better provide ongoing mental health assistance to victims before, during, and after the traffickers have been prosecuted. Doing so will not only better enable victims to aid law enforcement in finding and prosecuting traffickers, but will also prevent survivors from being re-victimized in the future.

## II. THE RISE OF HUMAN TRAFFICKING

### A. *A Tainted Economic Theory—Supply and Demand Gone Wrong*

The main cause of human trafficking is poverty.<sup>14</sup> The trafficking enterprise “is successful because it targets the most vulnerable and marginalized in society—people who are already struggling to survive on the lowest rungs of the socioeconomic hierarchy.”<sup>15</sup> Women and girls are

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13. Jennifer Goodson, *Sex Trafficking Threatens the United States*, in PROSTITUTION AND SEX TRAFFICKING 22, 25 (Louise Gerdes ed., 2006) (explaining how, out of the 170 cases, 131 involved sex trafficking); see also Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 347 (2007) (arguing that the Justice Department's “lack of aptitude in recognizing victims is matched by its lack of proficiency in prosecuting traffickers”).

14. Trafficking Victims Protection Act of 2000 § 102(b)(4), 22 U.S.C. § 7101(b)(4) (2006) (stating that the primary target of traffickers are women and young girls who are more adversely affected by poverty). The disproportionate effects of poverty among women and young girls is caused by “the lack of access to education, chronic unemployment, discrimination, and the lack of economic opportunities in countries of origin.” *Id.* These poverty-stricken women are then lured into trafficking by deceitful promises of good working conditions and good pay abroad. *Id.*

15. Nilanjana Ray, *Looking at Trafficking Through a New Lens*, 12 CARDOZO J.L. & GENDER 909, 909 (2006) (delineating the root causes that lead individuals to fall victim to

the primary victims of trafficking because of their “greater susceptibility to poverty, illiteracy, and lower social status.”<sup>16</sup> Cultural views of women as less valuable than men have produced a more tolerant view of prostitution and sexual violence in some parts of the world.<sup>17</sup> Further, higher rates of illiteracy among females in developing countries denies many young women the resources to escape violence.<sup>18</sup>

Economic discrepancies have primarily contributed to the increase in forced prostitution and human trafficking throughout the world, mostly in developing nations.<sup>19</sup> Poverty creates an environment where women and young people, in seeking to improve their economic condition, can more easily fall prey to traffickers’ false promises of a better life elsewhere.<sup>20</sup> The result is that trafficking violence disproportionately affects

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human traffickers). Generally speaking, women and children constitute the most “vulnerable and marginalized” individuals susceptible to human trafficking. *Id.* Certain economically disadvantaged geographic locations, namely, South Asia, Africa, and former Soviet satellites, are fertile hunting ground for human traffickers. *Id.* at 924. Individuals from these regions are increasingly vulnerable to human trafficking due to collapsing markets and resources, marginal farming economies, and disease. *Id.* at 924–25.

16. Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 163 (2007) (citing Trafficking Victims Protection Act of 2000 § 102(b)(4), 22 U.S.C. § 7101(b)(4) (2006)). Srikantiah explains:

Trafficking to the United States is typified by three fact scenarios. The first is that of the domestic worker, a migrant who works as a maid, nanny, or housekeeper at the home of a U.S. resident. The second is that of a migrant working in the hotel, restaurant, factory, or farm industries. The third involves migrants trafficked for forced sex work.

*Id.* at 164.

17. Tiffany St. Claire King, *The Modern Slave Trade*, 8 U.C. DAVIS J. INT’L L. & POL’Y 293, 303–04 (2002). Gender-based oppression contributes significantly to the disparate impact of trafficking on females. *Id.* Social customs that condone or promote the sexual exploitation of women and girls, poverty, and cultural norms that operate to discourage the education of female children all contribute to trafficking in women. *Id.* The author argues that, while there are many reasons why women are disproportionately affected by trafficking in humans, the fundamental cause is disparate power between men and women. *Id.*

18. *Id.*

19. PETER DICKEN, *GLOBAL SHIFT: RESHAPING THE GLOBAL ECONOMIC MAP IN THE 21ST CENTURY* 560 (4th ed. 2003).

20. Janie Chuang, *Redirecting the Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 68–69 (1998) (detailing how the trafficking of women is motivated by sexism, racism, but, most importantly, poverty, “all of which combine to create a situation of unequal bargaining power and vulnerability”).

In developing countries or countries with economies in transition, conditions of poverty—which are aggravated for women because of their traditionally lower economic status in these countries—can lead women to accompany traffickers. These conditions can also compel families to sell their female relatives to traffickers in the hopes that they will have an opportunity to earn money for themselves or their families.

individuals, particularly women, who are poor or otherwise disadvantaged.<sup>21</sup> Thus, trafficked individuals are often “migrant workers who left home in search of a [better] livelihood for themselves and their families, [only to be] exploited in the grey, unregulated sectors of the global economy.”<sup>22</sup>

#### B. *Thou Shall Not Lie: False Promises and Broken Dreams*

Traffickers look to “exploit the dreams and fears of the poor,” as well as the “religious beliefs of their victims.”<sup>23</sup> Traffickers appeal to victims’ economic desperation by fraudulently advertising employment opportunities,<sup>24</sup> providing their victims with fake employment contracts and a list of fake contacts in the destination country.<sup>25</sup> In some instances, the traffickers gain legitimacy by returning to their hometowns and “showcasing” themselves as beneficiaries of Western opportunity.<sup>26</sup> Traffickers also

*Id.* What many women fail to realize is that they are subjecting themselves and their daughters to slave-like conditions in the destination country. *Id.*

21. Shahidul Haque, *Ambiguities and Confusions in Migration—Trafficking Nexus: A Development Challenge*, in *TRAFFICKING AND THE GLOBAL SEX INDUSTRY* 3, 6 (Karen Beeks & Delila Amir eds., 2006).

22. Nilanjana Ray, *Looking at Trafficking Through a New Lens*, 12 *CARDOZO J.L. & GENDER* 909, 922 (2006). The economic transition in former communist nations has exacerbated unemployment numbers and created increased potential for exploitation in human trafficking. *Id.* at 925. Women, whose jobs were disproportionately eliminated in these countries, have become increasingly exploited by the empty promises of high-paying jobs in affluent countries. *Id.* The scale of impoverishment, however, supports the thesis that even if some women were better informed, others would still feel compelled to take the risk. *Id.* at 926.

23. Luz Estella Nagle, *Selling Souls: The Effect of Globalization on Human Trafficking and Forced Servitude*, 26 *WIS. INT’L L.J.* 131, 146 (2008).

24. Susan Jeanne Toepfer & Bryan Stuart Wells, *The Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 *MICH J. GENDER & L.* 83, 89 (1994). The FBI has “documented over [three hundred] cases per year of women forced into prostitution when they responded to ‘talent agency’ advertisements for entertainment jobs in foreign countries.” *Id.*

25. April Rieger, Note, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 *HARV. J.L. & GENDER* 231, 236 (2007). Making promises of legitimate employment is just one of many methods traffickers use to swindle women into the sex trade. *Id.* at 236–37.

26. ANTHONY M. DEStEFANO, *THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* 1 (2007) (explaining how a family of traffickers visited their home town in Mexico to lure young women into sex trafficking through false promises).

The drivers of the fancy American cars were themselves from Barrio El Pilar, so they understood the residents’ bleak futures. But they also offered hope. Lives didn’t have to be consigned to obscure toil. Beyond Santiago Tuxtla, even beyond Veracruz—itsself a city that seemed like Oz to the region’s provincial population—there was money to be made.

procure their victims online,<sup>27</sup> and many popular mail-order bride websites are “sex trafficking operations in disguise, just as massage parlors are notorious fronts for forced prostitution.”<sup>28</sup> By appealing to their impoverished victims’ dreams and aspirations, traffickers are often able to lure willing victims away from their families.

One young woman from the Ukraine, Sasha, had always dreamed of becoming a famous dancer and entertaining thousands of people.<sup>29</sup> What she thought was an opportunity to realize her dream appeared in a magazine advertising for dancers in Belgium.<sup>30</sup> The advertisement stated that female dancers were needed at a new school built to teach and train some of the most talented dancers in the world.<sup>31</sup> After obtaining one thousand dollars for transportation to Moscow and initial accommodations, Sasha said goodbye to her parents and embarked on a journey to fulfill her dream.<sup>32</sup> But when Sasha and the other girls arrived at a dilapidated building that housed over twenty bare beds, she realized that she was not taken to Belgium to become a professional dancer: traffickers had lured her to become a prostitute.<sup>33</sup>

Traffickers also procure their victims through the use of force,<sup>34</sup>

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*Id.* With their expensive cars, the traffickers seemed to offer a life full of opportunity, money, and glamor. *Id.*

27. Kirsten M. Lindee, *Love, Honor, or Control: Domestic Violence, Trafficking, and the Question of How to Regulate the Mail-Order Bride Industry*, 16 COLUM. J. GENDER & L. 551, 551–52 (2007); Susan Tiefenbrun, *The Saga of Susannah, U.S. Remedy for Sex Trafficking in Women: The Victims of Trafficking and Violence Protection Act of 2000*, 2002 UTAH L. REV. 107, 119 (“The Internet is the latest hot spot for promoting global trafficking and the recruitment of women and children.”).

28. Kirsten M. Lindee, *Love, Honor, or Control: Question of How to Regulate the Mail-Order Bride Industry*, 16 COLUM. J. GENDER & L. 551, 554 (2007).

29. CRAIG MCGILL, *HUMAN TRAFFIC: SEX, SLAVES & IMMIGRATION* 76 (2003) (describing how one woman’s dream to become a world-renowned dancer was transformed into a nightmare of sexual exploitation).

30. *Id.* at 77.

31. *Id.*

32. *Id.*

33. *Id.* at 79.

34. Katrin Corrigan, Note, *Putting the Brakes on the Global Trafficking of Women for the Sex Trade: An Analysis of Existing Regulatory Schemes to Stop the Flow of Traffic*, 25 FORDHAM INT’L L.J. 151, 156 (2001) (explaining that thousands of women become part of “the global sex trade through various coercive methods,” including abduction). Eastern European countries have, in recent years, become the predominant source from which traffickers forcibly (or otherwise) obtain women. *Id.* Even victims who travel abroad willingly may be forcibly exploited once they reach their destination country. *Id.* at 158. Traffickers routinely confiscate victims’ passports or other travel documents and withhold a victim’s earnings and freedom until their “debt” is repaid. *Id.*

kidnapping or buying them from their families.<sup>35</sup> In fact, “[i]n some countries, indigent families will sell a daughter to a trafficker, who either pays for the girl at the outset or provides a loan called a ‘debt bond’ to the family (which the girl must then pay off through prostitution).”<sup>36</sup> In other instances, traffickers entice young women to marry them, only to then force them into prostitution.<sup>37</sup> Traffickers will use any means necessary to procure victims who can generate a profit in the very lucrative sex trade.

### III. THE TRAFFICKING VICTIMS PROTECTION ACT

#### A. *The Trafficking Victims Protection Act—What’s in a Name?*

The title of the TVPA is a misnomer.<sup>38</sup> Although one of the main functions of the act is to protect human trafficking victims, the overemphasis on prosecution of traffickers has rendered the act an ineffective tool in providing aid to victims of human trafficking.<sup>39</sup> The level of assistance a victim of human trafficking receives is strongly correlated to the victim’s ability and willingness to cooperate with law enforcement officials.<sup>40</sup> What is important for law enforcement to understand is that emphasizing prosecution of traffickers, rather than protection of victims, undermines the intent of Congress in passing the TVPA.<sup>41</sup>

35. April Rieger, Note, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J. L. & GENDER 231, 235–36 (2007). Some of the aggressive techniques used by traffickers include the kidnapping or buying of victims. *Id.* In the case of kidnapping, it is hard for trafficked victims to escape the sex trade because their families are unaware of their whereabouts. *Id.* at 236. In the case of a woman being sold by her family, fathers, uncles, or husbands are the usual suspects. *Id.*

36. ANTHONY M. DEStEFANO, *THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* 98 (2007).

37. *Id.*

38. Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 345–46 (2007) (“[P]retending to have a primary objective of victim protection, but tying that protection to the will, ability and desire of a law enforcement official to prosecute a crime, renders the TVPA a law enforcement-oriented piece of legislation and the title of the TVPA a misnomer.”).

39. *Id.* at 358.

40. Angela D. Giampolo, Comment, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. RTS. L. REV. 195, 198–99 (2006).

41. Dina Francesca Haynes, *(Not) Found Chained to a Bed in a Brothel: Conceptual, Legal, and Procedural Failures to Fulfill the Promise of the Trafficking Victims Protection Act*, 21 GEO. IMMIGR. L.J. 337, 358 (2007) (stating that “the number of distortions and misrepresentations made by the government officials in applying the intent and express



### B. *The Enigmatic and Elusive T Visa—Looking Beyond Statistics*

The TVPA sets forth the guidelines for how assistance to victims, both abroad and in the United States, is to be administered.<sup>42</sup> The TVPA provides immigration status to non-citizen victims of trafficking who, upon rescue, face deportation to countries in which they may suffer retaliation or even re-enslavement.<sup>43</sup> Interestingly, these benefits are only available to those victims of human trafficking who “agree to cooperate with law enforcement in the investigation or prosecution of their trafficking cases.”<sup>44</sup> Thus, the TVPA denies assistance and protection to those many victims who are too scared or traumatized to effectively assist the capture and prosecution of their abusers.<sup>45</sup>

The three types of immigration benefits available to non-citizen trafficking victims are: (1) the “continued presence” temporary immigration benefit through which a witness to a trafficking crime can secure protection from deportation; (2) the temporary immigration benefit of T visa status, which lasts up to three years; and (3) lawful permanent residence upon completion of the three-year T visa.<sup>46</sup> The TVPA sets forth the benefits and requirements for victims of human trafficking to be eligible for a T visa.<sup>47</sup> Currently, the TVPA caps the number of T visas that can be issued at only five thousand per year.<sup>48</sup>

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wording of the TVPA appears to be on the rise in favor of severely curtailing the scope of who can be considered a victim of human trafficking”). Haynes continues:

The intent of the TVPA was to assist victims of human trafficking. That *intent*, however, was not limited to the pragmatic desire to secure the testimony for prosecuting the traffickers but then deport them after they were no longer useful for that purpose; rather, it was to acknowledge the particular horrors suffered by those victims by providing them with safety, security, and health care.

*Id.* at 359 (emphasis in original).

42. Trafficking Victims Protection Act of 2000 § 107, 22 U.S.C. § 7105 (2006) (setting forth eligibility requirements for victims of human trafficking abroad and in the United States to receive benefits and protection). Programs will be carried out in foreign nations by United States operations to “assist in the safe integration, reintegration or resettlement, as appropriate, of victims of trafficking.” *Id.* § 107(a)(1). Support given to foreign nations will include adequate protective shelters, as well as aid in establishing local service centers. *Id.* § 107(a)(2).

43. Hussein Sadruddin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 388 (2005).

44. *Id.*

45. *Id.*

46. *Id.* at 387–88.

47. Trafficking Victims Protection Act of 2000 § 107(b)(1)(B), 22 U.S.C. § 7105(b)(1)(B) (2006).

48. *Id.* § 107(e)(2)(B).

Surprisingly, since the implementation of the TVPA, there have been relatively few applicants for the T visa.<sup>49</sup> This perplexing fact has led many to question whether trafficking victims are choosing not to cooperate and, thereby, not qualifying for the benefits.<sup>50</sup> Indeed, statistics reveal that trafficking victims frequently do not cooperate with law enforcement after they are rescued.<sup>51</sup> Thus, the number of T visa applications is remarkably low in comparison to the number of victims of human trafficking.

### C. *The Power of Rhetoric—Can One Word Make a Difference?*

In order to be eligible for a T visa, a victim of human trafficking must be able to prove that he or she is a victim of a form of “severe trafficking.”<sup>52</sup> Section 107 of the TVPA sets forth the “severe trafficking” language as a requisite for obtaining benefits and services, including eligibility for a T visa.<sup>53</sup> Congress defined the term “severe forms of trafficking” as:

(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained [eighteen] years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.<sup>54</sup>

The “severe forms of trafficking” language raises two problems: the “severe” standard prevents many victims of human trafficking from becoming eligible for the T visa in the first place, and victims who do not

49. ANTHONY M. DEStEFANO, *THE WAR ON HUMAN TRAFFICKING: U.S. POLICY ASSESSED* 136–37 (2007) (stating that even though hundreds of victims of human trafficking have received T visas, nowhere near the maximum five thousand T visas have been distributed).

50. *Id.* at 137. Victims have various reasons for not wanting to cooperate with law enforcement; for example, some say that they may not want to remain in the United States after their ordeal. *Id.*

51. *Id.* at 137–38.

52. April Rieger, Note, *Missing the Mark: Why the Trafficking Victims Protection Act Fails to Protect Sex Trafficking Victims in the United States*, 30 HARV. J.L. & GENDER 231, 245 (2007). Becoming certified as a victim of severe trafficking is a long process. *Id.* at 245–48. In fact, some victims have been reported to wait months before officials supplied them with the benefits they needed. *Id.* at 248. Because of this time barrier and because benefits are given to the victim only after she is certified for the T visa, some victims are deterred from seeking relief or cooperating with law enforcement. *Id.*

53. Trafficking Victims Protection Act of 2000 § 107(b)(1)(B), 22 U.S.C. § 7105(b)(1)(B) (2006).

54. *Id.* § 103(8), 22 U.S.C. § 7102(8) (2006).

cooperate with law enforcement are ineligible for this form of relief.<sup>55</sup> Thus, the word “severe” limits assistance and benefits to a particular type of victim, while creating the impression that other types of human trafficking are less offensive.<sup>56</sup>

Furthermore, entrusting law enforcement with the task of classifying a victim of human trafficking as one who has suffered a “severe form of trafficking” has the unfortunate effect of making eligibility for the T visa dependent upon the victim’s capability to assist and cooperate in the prosecution of the trafficker.<sup>57</sup> Ironically, the more severe the trafficking, the more a victim may be psychologically incapable of assisting law enforcement after rescue.<sup>58</sup>

#### D. *De-Romanticizing the Victim of Human Trafficking—A Journey into the Mind of a Trafficking Victim*

Far from the romanticized notion that many policymakers might have of a human trafficking victim who patiently waits for the arrival of her rescuers, her will and morale barely jaded, the reality is always far more bitter.<sup>59</sup> First, law enforcement should understand that the victim may not perceive her rescue positively, as she may remain under the psychological control of her traffickers.<sup>60</sup> Traffickers often repeatedly threaten the victims with prison or deportation if found by immigration or legal

55. Michael C. Payne, Comment, *The Half-Fought Battle: A Call for Comprehensive State and Anti-Human Trafficking Legislation and a Discussion of How States Should Construct Such Legislation*, 16 KAN. J.L. & PUB. POL’Y 48, 53 (2006).

56. Angela D. Giampolo, Comment, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & CIV. RTS. L. REV. 195, 217 (2006).

57. Jayashri Srikantiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 176 (2007).

58. *Id.* at 200 (explaining that victims may remain under the psychological sway of their traffickers long after obtaining physical freedom).

59. *Id.* A common misconception is that a victim’s free will is instantly regained upon rescue. *Id.* When a person has lost the exercise of free will over a period of time, however, it is a difficult transition to first make decisions for oneself and to make decisions to cooperate with law enforcement. *Id.* When one’s ability to make independent decisions is warped by a painful experience like human trafficking, the restoration of free will has little meaning when a victim is still under the trafficker’s psychological control. *Id.*

60. See Marisa Silenzi Cianciarulo, *Modern-Day Slavery and Cultural Bias: Proposals for Reforming the U.S. Visa System for Victims of International Human Trafficking*, 7 NEV. L.J. 826, 833 (2007) (noting that a victim of human trafficking’s first encounter with law enforcement officials tends to be a “highly charged, potentially violent encounter involving armed officers and often resulting in the trafficking victim’s arrest”). Many victims of human trafficking first encounter law enforcement officials “during workplace raids.” *Id.* Even though law enforcement officials are there to assist the victims, “their conduct during the raid (for example, the arrest of the victims) encourages the deeply ingrained sense among victims that law enforcement is indifferent to them at best and hostile at worst.” *Id.*

authorities.<sup>61</sup> Furthermore, victims are usually told that their families will be harmed if they betray their traffickers upon rescue.<sup>62</sup> Not surprisingly, then, a victim will often “[lie] to [law enforcement] agents, telling them that she voluntarily migrated and that the trafficker did nothing wrong.”<sup>63</sup> As a result, police conclude that the trafficking victim is an accomplice of the trafficker and will place her in removal proceedings.<sup>64</sup>

Studies of law enforcement officers, war veterans, and survivors of natural disasters have demonstrated “that assaults to the integrity of a person’s body—including severe injury, physical abuse, rape and torture—may lead to the development of traumatic stress disorder.”<sup>65</sup> The greater the extent of the violence, especially interpersonal violence, and the greater the victim’s inability to control the situation, the greater the risk that the victim will suffer long-term mental health problems.<sup>66</sup> Extreme trauma can damage the brain’s and the body’s capacity to respond to stress, which, in turn, can cause long-lasting changes to behavior.<sup>67</sup> Given that human trafficking victims are constantly subjected to severe trauma, they are at great risk of suffering neurobiological changes and corresponding behavioral problems.<sup>68</sup>

Besides the possibility of developing behavioral changes, many victims of human trafficking face a constant threat of chronic traumatic stress and anxiety.<sup>69</sup> In dealing with such high levels of stress and anxiety, a trafficking victim may continuously resort to dissociation in an effort to cope

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at 833–34. “[Victims’] initial contact with individuals who could potentially help them, therefore, is stigmatized.” *Id.* at 834.

61. Jayashri Srikanthiah, *Perfect Victims and Real Survivors: The Iconic Victim in Domestic Human Trafficking Law*, 87 B.U. L. REV. 157, 200 (2007) (explaining why victims can be mistaken for accomplices when they are loyal to the trafficker out of fear).

62. *Id.*

63. *Id.*

64. *Id.*

65. Jonathan R.T. Davidson, *Posttraumatic Stress Disorder and Acute Stress Disorder*, in COMPREHENSIVE TEXTBOOK OF PSYCHIATRY/VI 1227, 1230 (Harold I. Kaplan & Benjamin J. Sadock eds., 6th ed. 1995).

66. Hussein Sadruddin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 399 (2005) (explaining that the effects of being trafficked can have a negative effect on the brain’s ability to react as it normally would).

67. *Id.*

68. *Id.*

69. *Id.* at 403 (explaining that chronic traumatic stress can lead to a persistent state of anxiety). When someone has been severely traumatized or trauma has occurred repeatedly, their brain and body may become conditioned to exhibit survival reactions when responding to things that are actually not a threat. *Id.*

with even the most minimal stress triggers.<sup>70</sup> This response can “lead to changes in how victims relate to or trust themselves and others.”<sup>71</sup> One such adaptation to stress and anxiety is referred to as “learned helplessness.”<sup>72</sup> Victims may become extremely submissive, even learning to identify with their traffickers.<sup>73</sup> This, in turn, may cause a victim to become protective of his or her captor, excusing “violent behavior as an aberration.”<sup>74</sup>

All of these psychological and behavioral reactions can lead trafficking victims to act in an illogical manner.<sup>75</sup> One example of such illogical behavior occurs when an apparently willing victim does not seem to want assistance, which may lead a casual observer to conclude that the victim’s story has no credibility.<sup>76</sup> It is this response to severe and prolonged violence that leads many victims to resist cooperating with law enforcement, making them ineligible for badly needed immigration relief.

#### IV. PROGRESS TOWARD REFORM

Because the current language of the TVPA denies many legitimate victims of human trafficking legal recourse upon rescue, change is needed to better protect the men, women, and children who are trafficked annually into the United States. Three major revisions will further the stated aims of the act—protecting victims and prosecuting their captors.

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70. *Id.* at 404. For some victims, dissociation may be the response to the smallest amounts of stress. *Id.*

71. Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 404 (2005).

72. *Id.* (discussing how, as a result of constant punishment for many of their actions, trafficking victims are never sure what is acceptable behavior). “Learned helplessness” is defined as “[a] laboratory model of depression involving both classical (respondent) and instrumental (operant) conditioning techniques; application of unavoidable shock is followed by failure to cope in situations where coping might otherwise be possible.” STEDMAN’S MEDICAL DICTIONARY 979 (27th ed. 2000).

73. Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 404 (2005).

74. *Id.* (“This ‘traumatic attachment’ to perpetrators is also difficult to extinguish once it has been set into motion.”).

75. *Id.* For example, a trafficking victim may show no emotion when discussing the horrific events she has endured. *Id.* Also, a victim may complain of physical pain that does not correlate with the physical injury she has actually suffered. *Id.* For these reasons, victims may begin to seem as though they lack credibility. *Id.*

76. *Id.* (stressing that understanding the ways in which victims adapt to chronic stress, and how they are affected while doing so, can assist in understanding such behaviors).

A. *Step 1: Targeting the Main Hubs of Human Trafficking*

Any amendment to the TVPA must begin with targeting locales with a high concentration of human trafficking activity. Hence, the first step of reform should be to analyze those locales and begin to move more resources to them. Law enforcement in these cities must be equipped with federal funds to identify victims of human trafficking, break up trafficking rings, and prosecute offenders. In addition, federal funds should be allocated for the training and employment of mental health practitioners, who are integral to victim recovery. A well-trained cadre of these experts should be available in those cities where trafficking victims are concentrated in order to counsel the victims, thereby facilitating their cooperation with the law enforcement process.

B. *Step 2: Turning Rhetoric into Successful Programs*

Once the main hubs of human trafficking have been identified, funding for the training of law enforcement and mental health practitioners should come from the millions of dollars spent abroad fighting human trafficking. Human trafficking often originates in countries with weak economies and unstable, corrupt governments.<sup>77</sup> These governments are less likely to properly use American aid to fight human trafficking, since they will very likely lack the proper agencies, personnel, and other resources necessary to properly allocate the funds.<sup>78</sup>

Instead, by keeping these funds in the United States, domestic law enforcement can develop an anti-trafficking blueprint for foreign governments to follow. If domestic law enforcement can better prepare victims of trafficking to participate in the arrest and conviction of their abusers,

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77. See, e.g., Jasna Vujin, *Human Trafficking in the Balkans: An Inside Report*, 4 INTERCULTURAL HUM. RTS. L. REV. 267, 278–79 (2009) (describing how civil war in the Balkans led to instability in many countries and ultimately provided a haven for sex trafficking). In the case of the former Yugoslavia:

[Civil war in the 1990s created] a region of failed states, countries with no proper border control, no adequate police force or the army to enforce a rule of law, with corrupted officials and court officers, unstable governments and destroyed economies. These events greatly destabilized not just the countries directly engaged in this war but the whole region, creating a climate convenient for the networks of organized crime to use it for the flourishing of human trafficking in the region. Without existing legal norms to address the human trafficking as a criminal [offense], lack of border control and widespread corruption of the state system and its officials allowed many women from Ukraine, Moldova, Latvia, Russia to be trafficked through the former Yugoslav republics, but also via Romania, Bulgaria, Albania and Hungary into the destination countries of Western Europe.

*Id.*

78. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT'L L. 1, 21 (2004).

the United States can put away the criminals that foreign governments, thus far, have been unable to deter.

*C. Step 3: Mental Health Assistance Beyond the Initial Contact*

Finally, and most importantly, the TVPA must address the mental health needs of rescued victims.<sup>79</sup> Mental health assistance for victims of human trafficking has received very little policy and legal attention due to the persistent view of victims of human trafficking as prostitutes and illegal immigrants.<sup>80</sup> Without this necessary attention, any legal and policy discourse regarding adequate mental health services for victims of human trafficking will always fall short. Victims of human trafficking are individuals who have endured rape, emotional and physical trauma, and, in some instances, near death experiences.<sup>81</sup>

There exist mechanisms to help rape victims cope with the trauma that results from the experience: many rape victims seek mental health assistance in order to recover from the traumatizing experience.<sup>82</sup> Why, then, is mental health assistance for victims of human trafficking, who have similarly endured rape and physical and emotional battery, virtually unavailable? Under the current regime, any kind of government-provided mental health assistance can only be obtained after an arduous process that only exacerbates victims' emotional and physical trauma.<sup>83</sup>

Because the psychological needs of victims of human trafficking are so woefully ignored, the training of law enforcement officials and legal practitioners should not only focus on identifying a victim of human trafficking, but also in understanding these victims' emotional suffering.<sup>84</sup> Law

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79. Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 406 (2005).

80. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT'L L. 1, 22 (2004).

81. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 5* (2008), <http://www.state.gov/documents/organization/105501.pdf>.

82. See, e.g., Rape Assistance and Awareness Program, <http://www.raap.org/index.html> (last visited Nov. 11, 2009) (containing information about a program that provides assistance to rape victims).

83. Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 381 (2005). "As written, the TVPA requires too much documentation of difficult eligibility requirements, making the process of obtaining benefits time-consuming and burdensome for victims and law enforcement personnel." *Id.* at 406.

84. *Id.* at 413 (proposing that mental health assistance be provided to trafficking victims in order to improve their ability to assist law enforcement officers). Those rape victims who had the opportunity "to access mental health benefits may improve with treatment and eventually be able to provide assistance to law enforcement." *Id.* at 413-14. In fact, "[s]ome victims may find participation in prosecuting their trafficker a necessary part of their recovery and will be able to fully assist law enforcement." *Id.* at 413.

enforcement should also remember that the victims of human trafficking do not get to keep their "earnings," nor do they voluntarily choose to engage in illegal activity.<sup>85</sup> And, while victims of human trafficking voluntarily choose to illegally immigrate to the U.S., this action is influenced by traffickers' lies or compelled by violence.<sup>86</sup> An untrained law enforcement official or legal practitioner might fail to consider that, while victims of human trafficking have engaged in illegal behavior, the mens rea to engage in such behavior is certainly missing.

There is no difference between a rape victim, a victim of physical and emotional abuse, and a victim of human trafficking. Proper training of law enforcement officials and legal practitioners will not only help to more effectively identify victims of human trafficking, but will also reinforce the fact that these women and girls are victims, not criminals.<sup>87</sup>

Mental health assistance for these victims should be offered at the initial encounter with law enforcement. This initial assistance will play a crucial role in the overall healing process that will enable the victim of human trafficking to re-enter the society from which she was unjustly removed.<sup>88</sup>

Further, provision of mental health assistance at the initial stage of identification is essential to fulfilling the three essential goals of the TVPA discussed above. Initial mental health assistance will help combat human trafficking by laying the groundwork for the victim to re-enter society. It would also help prevent victims from again falling prey to traf-

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85. *Id.* at 382–83. Trafficking victims do not choose their profession:

Sudden, unexpected physical assaults, burnings, and the use of rape or murder as tools of control all instill terror in victims and may cause them to believe that escape from their traffickers will lead to even worse situations. The TVPA describes how traffickers use psychological torture and fear to maintain control, threatening to physically harm the victims, their families, or others "should the trafficking victim escape or attempt to escape."

*Id.* at 383 (footnotes omitted).

86. *Id.* at 383.

87. Shashi Irani Kara, *Decentralizing the Fight Against Human Trafficking in the United States: The Need for Greater Involvement in Fighting Human Trafficking by State Agencies and Local Non-Governmental Organizations*, 13 *CARDOZO J.L. & GENDER* 657, 662 (2007) (arguing that law enforcement officials should be trained in mental health issues). Though the TVPA provides basic amenities and mental health services, "before rehabilitation can begin, identifying and rescuing victims can be difficult without proper training on how to distinguish between victims and undocumented workers." *Id.*

88. Many victims who suffer from severe mental trauma, however, are unable to describe their experiences to law officials shortly after rescue. Hussein Sadrudin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 *STAN. L. & POL'Y REV.* 379, 406 (2005). "If victims cannot cooperate quickly, they may face deportation or illegal status and are ineligible for most benefits under the TVPA." *Id.*



fickers and would encourage and enable victims to better cooperate with authorities, possibly leading to the apprehension and prosecution of more traffickers.

Continuing mental health assistance is imperative, especially during the prosecution phase, in order to assist the victim in coping with the stress of a trial. Providing continuous mental health assistance throughout the trial will ensure not only the victim's well-being, but also the victim's ability to testify for law enforcement. It is critical that victims are healthy enough to effectively cooperate with law enforcement and testify, as only the victims can provide critical information about their captors. At this stage, the victim has to relive his or her experiences, as well as disassociate from previously held trust in the victim's traffickers. If no mental health assistance is provided or the assistance provided is inadequate, the capability of the victim to cooperate with law enforcement diminishes.

Furthermore, because a prosecution may fail due to the victim's inability to testify, the unassisted victim must face the harsh reality that his or her failure to testify contributed to the traffickers' victory. Even more troubling is the reality that, following an unsuccessful prosecution, the utility of the victim to law enforcement ends, leaving the victim vulnerable to being re-absorbed into the trafficking market.

Ultimately, a victim of human trafficking can prove essential to the prosecution of traffickers only if the victim is psychologically healthy enough to cooperate with law enforcement. Thus, the provision of adequate mental health services throughout the prosecution process will help the victim of human trafficking to better cope with the realities and pressures of a trial, while simultaneously providing legal practitioners with a key source of information. Consequently, providing mental health assistance at the prosecution stage can serve to better fulfill the stated goals of the TVPA.

Even after the prosecution phase, continuing provision of free mental health assistance will play a crucial role in allowing the victim of human trafficking to re-enter society without falling prey, once again, to the trafficking cycle. It will also facilitate the victim's transition from the world of forced prostitution, rape, and physical abuse into a normal way of life. It is important to remember that socio-political weakness is the primary risk factor for falling victim to human traffickers.<sup>89</sup> Thus, the United States should facilitate victim rehabilitation in order to reduce the number of potential victims of trafficking, another goal of the TVPA.<sup>90</sup>

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89. Nilanjana Ray, *Looking at Trafficking Through a New Lens*, 12 CARDOZO J.L. & GENDER 909, 924 (2006).

90. Trafficking Victims Protection Act of 2000 § 102(a), 22 U.S.C. § 7101(a) (2006) ("The purposes of this division are to combat trafficking in persons, a contemporary mani-

In order to provide this extensive and ongoing mental health service, the TVPA should allocate federal funding for the training of mental health professionals. Qualified professionals are crucial to providing these much-needed services, but they will not be available without substantial federal commitment to funding. In the long-run, however, valuable federal resources will be saved by funding rehabilitation of victims who can help put traffickers behind bars.

Millions of dollars in foreign aid are wasted abroad by corrupt governments that do not put the funds toward combating the problem of trafficking.<sup>91</sup> It is precisely these funds that should be reallocated to a program of victim rehabilitation through extensive mental health services. If corrupt governments abroad cannot deter the trafficking of humans into the United States, perhaps trained mental health professionals can help fight the problem at home.

The TVPA should be amended to recognize the emotional and psychological vulnerability of victims of human trafficking by funding mental health services for these traumatized men, women, and children. Doing so would further the stated aims of the statute by enabling victims to cooperate with law enforcement in the investigation and prosecution of traffickers. In addition, continued mental healthcare for victims will help reintegrate them into society—either in the U.S. or abroad—while giving them the tools to avoid becoming victims of trafficking for a second time. By adequately caring for future repeat victims, mental health professions can help prevent trafficking before it begins.

## V. CONCLUSION

Today, many human beings are trafficked across international boundaries, a crisis that has been addressed by both the international community and the United States.<sup>92</sup> Unfortunately, a law enforcement approach to combating human trafficking has failed to adequately protect victims. By placing the eligibility for benefits, including the T visa, in the hands of law enforcement officials, the TVPA creates a system in which the protection

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festation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”).

91. Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 STAN. J. INT'L L. 1, 21 (2004). Bruch states that “official complicity in trafficking is often so widespread and systematic that it reflects governmental policy or acquiescence” and that “much trafficking could not occur without the involvement of government officials, such as police and border control officers.” *Id.* (footnotes omitted).

92. U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 7 (2008), <http://www.state.gov/documents/organization/105501.pdf>.

of victims is secondary to the prosecution of traffickers.<sup>93</sup> Providing inadequate or no training to law enforcement has led to an inability to properly identify victims of human trafficking. Further, the failure to fund mental healthcare for victims has left those victims without critical resources to assist law enforcement and to avoid re-victimization. By providing needed mental health assistance to victims of human trafficking, the TVPA may also enable more effective prosecution of traffickers. Thus, the statute would truly accomplish *all* of its aims.

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93. Jennifer M. Chacon, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977, 3025 (2006).

